

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 27-018-18-1-5-00102-19
Petitioner: Kokomo Vehicles, LLC
Respondent: Grant County Assessor
Parcel: 27-07-34-403-039.000-018
Assessment Year: 2018

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated its 2018 assessment appeal with the Grant County Assessor on June 1, 2018.
2. On December 12, 2018, the Grant County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board and elected small claims procedures.
4. On August 29, 2019, Administrative Law Judge (ALJ) Dalene McMillen held the Board's administrative hearing. Neither the Board nor the ALJ inspected the property.
5. Attorney Gregory Kitts appeared for the Petitioner. Attorneys Brian Cusimano and Ayn Engle appeared for the Respondent. Edwin Blinn and Sally Jenks were sworn as witnesses for the Petitioner. Anthony Garrison was sworn as a witness for the Respondent.¹

Facts

6. The property under appeal is a single-family rental property located at 525 East South G Street in Gas City.
7. The PTABOA determined the 2018 total assessment was \$26,400 (land \$15,300 and improvements \$11,100).
8. The Petitioner requested a total assessment of \$19,000.

¹ Evan Blinn observed the hearing but was not sworn. Assessor Rhonda Wylie was sworn but did not testify.

Record

9. The official record for this matter is made up of the following:

a) A digital recording of the hearing.

b) Exhibits:

- Petitioner Exhibit 1: Drive-by appraisal (one page) of the subject property prepared by Sally Jenks, dated March 21, 2019; multiple listing sheets (MLS) for 700 Beech Drive in Gas City, 523 East South H Street in Gas City, and 114 North Harrisburg Avenue in Gas City; and parcel information sheets on the subject property,
- Petitioner Exhibit 2: Eight emails between Greg Kitts and Ayn Engle,
- Petitioner Exhibit 3: The following citations: *Black's Law Dictionary Fourth Pocket Edition*; *Marion Co. Ass'r v. Simon DeBartolo Group, L.P.*, 52 N.E.3d 65 (Ind. Tax Ct. 2016); Department of Local Government Finance (DLGF) Indiana Administrative Code Title 50; and 2011 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) pages 9 and 10.
- Respondent Exhibit A: 2018 subject property record card,²
- Respondent Exhibit E: Sales disclosure form for 523 East South H Street in Gas City,
- Respondent Exhibit G: Sales disclosure form for 700 Beech Drive in Gas City,
- Respondent Exhibit H: Sales disclosure form for 114 North Harrisburg Avenue in Gas City,
- Respondent Exhibit I: Property record card for 114 North Harrisburg Avenue in Gas City,
- Respondent Exhibit J: Property record card for 700 Beech Drive in Gas City,
- Respondent Exhibit K: Property record card for 523 East South H Street in Gas City.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Objections

10. Mr. Kitts objected to all of the Respondent's exhibits on the grounds the Respondent failed to timely provide copies prior to the hearing even though the Petitioner requested them. In response, Mr. Cusimano stated his co-counsel, Ms. Engle, attempted to exchange the evidence multiple times via email. Mr. Cusimano went on to argue all of

² Respondent's Exhibits B, C, D, and F were not offered.

the exhibits are publicly available documents. The ALJ took the objection under advisement.

11. The Board's small claims procedural rules provide that, if requested, "the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d). The rules further provide that failure to comply with that requirement "may serve as grounds to exclude evidence or testimony that has not been timely provided." 52 IAC 3-1-5(f) (emphasis added).
12. The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. The Respondent claims the exchange was attempted via email. According to Petitioner's Exhibit 2, several emails between the parties indicate the Respondent attempted to exchange the exhibits on August 22, 2019. On August 26, 2019, the Petitioner informed the Respondent the exhibits were not received. The Respondent again emailed the exhibits on August 27, 2019. The Respondent's exhibits are comprised of property record cards and sales disclosure forms for the subject property and comparable properties utilized in Petitioner's Exhibit 1. Under these circumstances, we find there is no prejudice against the Petitioner. Therefore, the Board overrules the Petitioner's objections and the exhibits are admitted.³
13. Mr. Cusimano objected to pages 2, 3, and 4 of Petitioner's Exhibit 2, emails pertaining to settlement negotiations between the parties, arguing settlement negotiations are inadmissible. The Petitioner did not offer a response. The ALJ took the objection under advisement.
14. We have repeatedly rejected attempts to use evidence of settlement negotiations to prove value. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). Here, pages 2, 3, and 4 of Petitioner's Exhibit 2 are clearly part of settlement negotiations. Therefore, the objection is sustained and these pages are excluded.

Contentions

15. Summary of the Petitioner's case:
 - a) The subject property is over-assessed. Mr. Blinn purchased the 1,275 square foot rental property on January 21, 2016, for \$7,674.⁴ The home includes three bedrooms,

³ Mr. Cusimano also argued Respondent's Exhibits E, G, H, I, J, and K are offered as rebuttal exhibits. Because the Board overruled the Petitioner's objection on the grounds of timely exchange, and these exhibits are admitted, Mr. Cusimano's rebuttal argument is moot.

⁴ Mr. Blinn is a member of Kokomo Vehicles, LLC.

one bathroom, original windows, missing vinyl siding, an aged roof, and was built in 1972.⁵ *Blinn testimony; Pet'r Ex. 1; Resp't Ex. A.*

- b) Mr. Blinn has been purchasing rental properties in Grant County for 30 years. According to Mr. Blinn, whether a prospective property is rented or not is irrelevant when considering purchasing because “it may be rented one day and empty the next.” *Blinn testimony; Pet'r Ex. 1.*
- c) In support of its position, the Petitioner offered a “drive-by” appraisal prepared by licensed residential appraiser Sally Jenks. Ms. Jenks valued the property utilizing the sales comparison approach. Based on her appraisal, Ms. Jenks estimated the total value of the property to be \$19,000 as of March 21, 2019. *Jenks testimony; Pet'r Ex. 1.*
- d) In developing her sales comparison analysis, Ms. Jenks selected three comparable properties from the multiple listing service. In searching for comparable properties, she focused on location, condition, size, bedrooms, and other amenities. *Jenks testimony; Pet'r Ex. 1.*
- e) The three comparable properties she examined are as follows:
- The first property located at 700 Beech Drive in Gas City sold for \$15,000 on September 29, 2017. The home measures 988 square feet, with three bedrooms, one bathroom, aluminum siding, an attached garage, and was built in 1975.
 - The second property located at 523 East South H Street in Gas City sold for \$20,000 on May 25, 2018.⁶ This home measures 988 square feet, with three bedrooms, one bathroom, a detached garage, and was built in 1956.
 - The third property located at 114 North Harrisburg Avenue in Gas City sold for \$22,000 on October 8, 2018. This home measures 1,188 square feet, has two bedrooms, one bathroom, aluminum siding, a garage, and was built in 1955.

Pet'r Ex. 1.

- f) According to Ms. Jenks, she did not make any time of sale adjustments to the comparable properties because there has not been any significant fluctuations in values in the market for the past three years. In addition, the Indiana Tax Court has recognized that taxpayers can use present day evidence as long as they relate it to the appropriate valuation and assessment dates. *Jenks testimony; Kitts argument (citing Marion Co. Ass'r v. Simon DeBartolo Group L.P., 52 N.E.3d 65 (Ind. Tax Ct. 2016); Pet'r Ex. 3.*

⁵ Petitioner's Exhibit 1 indicates the attached garage area was converted into the total square footage of the home.

⁶ According to the property record card, this sale occurred on June 18, 2018. *Resp't Ex. K.*

- g) Ms. Jenks went on to testify that “the true tax value may be considered as the price that would induce the owner to sell the real property, and the price at which the buyer would purchase the real property for a continuation of the use of the property for its current use.” Ms. Jenks claims a buyer purchases a property based on its perceived fair market value. Therefore, the assessed value of a property should not hinge on if it is rented or owner-occupied when it is a single-family residence. Mr. Kitts argued a rental property may be less valuable because the income of a property is not guaranteed. *Kitts argument; Jenks testimony; Pet’r Ex. 3.*
- h) In response to questioning, Ms. Jenks testified her “drive-by” appraisal is a term she uses indicating she did not go inside the subject property. She also testified that she did not inspect any of her comparable properties nor did she verify the information listed on the MLS was accurate, stating “MLS sheets are deemed reliable but not guaranteed.” Ms. Jenks also stated her appraisal report is not Uniform Standard of Professional Appraisal Practice (USPAP) compliant. *Jenks testimony; Pet’r Ex. 1.*

16. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. The property was valued at \$26,400 in 2018 based on the gross rent multiplier (GRM) method. The GRM is the preferred method for assessing one to four unit rental properties. According to Mr. Garrison, the GRM method will generally produce a lower assessed value than the sales comparison approach. *Cusimano argument; Garrison testimony; Resp’t Ex. A.*
- b) The Petitioner’s appraisal is flawed. Ms. Jenks did not perform an income or cost approach to value and failed to give any explanation as to why. By failing to perform the income approach on a rental property it significantly detracts from the probative value of the appraisal. Ms. Jenks also failed to include a grid analysis listing the characteristics of the various properties and the adjustments made to account for the differences. Most importantly, Ms. Jenks testified the appraisal is not USPAP compliant. *Cusimano argument (referencing Pet’r Ex. 1); Garrison testimony.*
- c) The first purportedly comparable property Ms. Jenks utilized was purchased for \$58,500 on November 3, 2004. The sales disclosure form indicates the property was transferred on September 25, 2017, for \$15,000 through a real estate owned (REO) sale. The property sold again on July 2, 2018, for \$80,000 and then again on August 19, 2019, for \$89,900. The only sale Ms. Jenks took into consideration is the REO sale on September 25, 2017. *Garrison testimony; Resp’t Ex. G, J.*
- d) The second purportedly comparable property Ms. Jenks utilized was purchased for \$50,000 on May 1, 2001. The sales disclosure form shows the property transferred to Wilmington Trust through a sheriff sale on February 27, 2018, for \$40,000. Wilmington Trust sold the property on June 18, 2018, for \$20,000. Ms. Jenks only considered the June 18, 2018, sale. *Garrison testimony; Resp’t Ex. E, K.*

- e) The third purportedly comparable property Ms. Jenks utilized transferred ownership three times in 2018. The property first sold on June 12, 2018, for \$20,000, again on October 8, 2018, for \$22,000, and again on October 26, 2018, for \$29,000. Ms. Jenks only considered the October 8, 2018, sale. According to the sales disclosure form, this transfer was the result of an auction. An auction sale normally results in a lower price than an open market sale. *Garrison testimony; Resp't Ex. H, I.*
- f) In response to the Petitioner's questioning, Mr. Garrison testified there is no vacancy rate applied in the GRM calculation because the assumption is made that the owner knows the property will not be occupied full time. As a result, the owner will compensate for the vacancy in the amount of rent that is charged. *Garrison testimony.*

Burden of Proof

- 17. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exceptions to that rule.
- 18. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
- 19. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
- 20. Here, according to the subject property record card the total assessed value of the property remained the same between 2017 and 2018. The Petitioner failed to offer any argument that the burden should shift to the Respondent. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

Analysis

21. The Petitioner failed to make a prima facie case for reducing the assessment.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *Id.* at 3; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting an assessment's presumed accuracy).
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
 - c) The Petitioner had the burden to prove the 2018 assessment was incorrect. In support of its position, the Petitioner presented a "drive-by" appraisal prepared by licensed residential appraiser Sally Jenks. Ms. Jenks utilized a sales-comparison approach by examining three purportedly comparable properties and opined the fair market value to be \$19,000 as of March 21, 2019.
 - d) The Board has previously held an appraisal performed in conformance with generally recognized appraisal principles is often the preferred way to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Here, Ms. Jenks testified her appraisal was not USPAP compliant.⁷ Ms. Jenks offered conclusory explanations for how the three purportedly comparable properties were chosen and she never explained why she did not make any adjustments to account for differences even though all of the properties were noticeably different. Ms. Jenks also failed to elaborate as to why she did not develop the cost and income approaches to value.
 - e) Furthermore, Ms. Jenks' opinion of value was dated March 21, 2019. This is over fourteen months removed from the relevant valuation date. The Tax Court has found that valuation evidence must be "affirmatively related" to the appropriate valuation date. *Nova Tube Ind. II, LLC v. Clark Co. Ass'r*, 101 N.E.3d 887, 895 (Ind. Tax Ct. 2018). Ms. Jenks provided conclusory statements, but no evidence to relate the

⁷ The Board will not speculate why a licensed residential appraiser would present a non-USPAP compliant appraisal.

appraisal to the relevant valuation date of January 1, 2018.⁸ Thus, even if we were to accept the appraisal was otherwise probative, it would still be insufficient. For these reasons, we find the appraisal to be an unreliable opinion of value.

- f) In finding that Ms. Jenks appraisal lacks probative value, the Board recognizes that she is a licensed residential appraiser. But even a recognized appraisal expert's testimony lacks probative value when it is conclusory. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 759 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (finding that an expert's testimony that the Producer Price Index (PPI) should be used to convert obsolescence from 1993 dollars to 1985 dollars lacked probative value where the expert did not explain what the PPI represented, how it was calculated, or why it was appropriate). Where, as here, an appraisal is highly conclusory and the opposing party has challenged the appraiser's valuation opinion, the appraiser must do more to explain the basic information underlying her opinion.
- g) Consequently, the Petitioner failed to make a prima facie case for reducing the 2018 assessment. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

22. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions, the 2018 assessment will not be changed.

ISSUED: November 26, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁸ To the extent the Petitioner sought to prove the January 21, 2016, purchase of the property might be probative, this argument would fail for the same reason. The purchase was almost two years removed from the relevant valuation date with nothing relating it to January 1, 2018. Additionally, the Petitioner failed to provide any evidence regarding the purchase and we are unable to determine if it was a valid arms-length transaction.

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>